THE

MADRAS LAW JOURNAL.

VOL.] MARCH, 1928. [LIV

LAW REPORTING*

Scotch, Irish and Colonial Reports.

It is not until 1537 when the Court of Session (as the Supreme Civil Court in Scotland is called) was established that settled forms of procedure can be said to have been established or judicial decisions treated as binding precedents in that country. The Court of Session consists of 13 Judges acting in an inner and outer house. The inner has two divisions with four Judges each, the first being presided over by the Lord President of the whole court and the second by Lord Justice Clerk. The history of this office bears remarkable resemblance to that of the Master of the Rolls in England. In the outer house, five Judges called Lords Ordinary sit in separate courts. Appeals may be made from the Lords Ordinary to either of the divisions of the inner house and if the occasion demands the opinion of all the Judges may be taken. From the Court of Session appeals lie to the House of Lords. Morison's Dictionary of decisions and Brown's synopsis of decisions contain abstracts of decisions from 1540, but regular reports date only from 1621†.

Court of Session cases date from 1821. The first series, known as Shaw and Dunlop, covers the period from 1821 to 1838; the second, Dunlop, Bell and Murray, from 1838-1862,

*The thirteenth of a series of lectures arranged by the University of Madras delivered by Mr. B. Sitarama Rao, Vakil, High Court.

† Durie's reports (1621-1642), Gilmour and Falconer (1661-1666), Gilmour and Falconer (1681-1686), Stair (1661-1681), Dirleton (1665-1677), Fountainhall (1678-1712), Harcarse (1681-1691), Dalrymple (1698-1718), Forbes (1705-1713), Bruce (1714-1715), Kames (remarkable) (1716-1752), Kames (select) (1752-1768), Edgar (1724-1725), Clark Home (1735-1744), Kilkerran (1738-1752), Falconer (1744-1751), Hailes (1766-1791), Bell (1790-1792), Bell (1793-1795), Hume (1781-1822), Faculty of Advocates (1752-1841).

the third known as Macpherson from 1862 to 1873, the fourth known as Rettie from 1873 to 1895. Fraser's Reports cover the period from 1898 to 1906. Since 1906, a new series commences, the citation for which is 1906 S. C., and so forth. The Court of Justiciary was instituted in 1672. It is the highest criminal court. The Lord Justice General (Lord President), Lord Justice Clerk and five other Judges form the High Court of Justiciary. There is no appeal from the Court of Justiciary to the House of Lords : *Mackintosh* v. *The Lord Advocate* (1). The reports of the justiciary cases are Shaw and Dunlop (1819-1831), Syme (1826-1830), Swinton (1835 1841), Broun (1842-1845), Arkely (1846-1848), Shaw (1848-1852), Stuart, Milne and Peddie (1851-1853), Irvine (1852-1868), Couper (1868-1885), White (1886-1893), Adam (1903-1906). Since 1906 Court of Justiciary Cases are reported along with Court of Session Cases and the citation is (1906) S. C. J., and so forth.

Scottish Law Reporter from 1865 up to date and Scots Law Times from 1893 up to date report all the courts without distinction.

The Scotch cases decided in the House of Lords from the time of the Union will be found reported in Robertson (1707 to 1727), Craigie, Stewart and Paton (1726-1821), Shaw (1821-1824), Wilson and Shaw (1825 to 1835), Shaw and Mclean (1835-1838), Maclean and Robinson (1839), Robinson (1840 to 1841), Bell (1842 to 1850), Macqueen (1851 to 1865), Paterson (1851 to 1873). The Scotch and Divorce cases cover the period from 1866 to 1875. The decisions of the subsequent period will be found reported in the Appeal Cases.

Though to start with, the Scotch Law was substantially the same as the English, the late establishment of centralised courts and the influence of France made the two systems depart considerably, the law of Soctland being largely modelled on the Digest and the Law of France. Such was the state of affairs at the time of the union in 1707, but since then the law in the two countries has been assimilated on many points. The criminal law of the two countries is now almost identical though the procedure differs in many respects. As regards the civil law the same Bill of Exchange Act governs both the countries. Similarly with the Workman's Compensation and the Sale of Goods Acts. The maritime law also is substantially the same. Similarly the law of torts and the law as to streams and

1. (1876) L R 2 A C 41.

waters. Still there are many points of difference. The theory of the Scotch criminal law is that the Supreme Criminal Court has power completely to punish (with the exception of life and limb) every act which is obviously of a criminal nature though it be such which in time past has never been the subject of prosecution. This view is not generally accepted in England though there is a decision which sounds in the same sense. There is no classification in Scotch criminal law of crimes into felonies and misdemeanours as in the English. The Scotch Law does not know the distinction between Equity and Common Law. Consideration is not necessary to support a contract, and mistake of law invalidates contracts. There is no distinction between contracts under seal and simple contracts; the distinction is between oral and written, and a written contract can be superseded only by another contract in writing. There is no statute corresponding to the Statute of Frauds in Scotland. Partnership is a distinct entity under that law. Trespass is not actionable without malice or substantial damage. There is no absolute power of disposition generally by will to the prejudice of wife and children. Actions by Lord Advocate or by relation to protect charities is unknown in Scotland and, as a result, suit by private individuals is recognised for the purpose : *Dundee Harbour Trustees* v. *D & Y Nicol* (2). The Scotch pleadings had never the subtlety and over-refinement they had in England. Some of the Scotch terms to which we have been in recent times familiarised by Scotch Judges in the Privy Council may be noted: a statement of claim annexed to the summons is condescendence, the plaintiff is pursuer, the defendant defender. Decree is the judgment of the court. Interlocutor is also used meaning a judgment. Condemnatur is a decree in favour of the pursuer, absolvitor in favour of the defendant. A mere dismissal does not operate as *res judicata*. A decree *in foro* is one pronounced after the defender has " compeared and pronounced his defences" and a decree in absence is one passed against one who had not appeared at all. By the Court of Session Act, 1868, 31 and 32 Vic., a decree in absence has the same effect as a decree *in foro* after the period assigned has expired. Multiplipounding is in familiar English interpleader; arrestment is garnishee proceedings; accretion in addition to its ordinary meaning is also used to denote the rule title feeds estoppel. Inhibition is attachment. Interdict is injunction. Rei Interventes is the

---

2. L R (1915) A C 568.

doctrine of part performance, and Homologation is conduct by which a man is estopped from denying the legal validity of an imperfect document. The obligation of a surety is caution. Conquest and singular succession correspond to purchase and inheritance of English Law. Approbate and Reprobate is the Scotch counterpart of the doctrine of election which has been held applicable by the Privy Council to India as a principle of universal jurisprudence. The doctrine of laches appears as Mora. Unlike the English Law, the Scotch Law compels a person to indemnify the relations of a deceased person for whose death he is criminally responsible. This is known as assythement. The rule as to liability for maintenance of relations is known as aliment. The Scotch Law imposes the legal obligation on father, failing him, mother, failing her, grandfather, of maintaining infant children and also recognises the liability of sons to maintain their indigent parents. In the case of illegitimate children, father and mother are equally liable. The Scotch Law also recognises a species of trust known as alimentary trust for the benefit of persons other than the settlor which is not assignable nor attachable by creditors. On points of general jurisprudence, construction of statutes and on all points where the English Law and the Scotch Law are identical, Scotch precedents may be of value to us here but there has hardly been an instance in which Scotch decisions other than those of the House of Lords have been cited in India. Many valuable decisions on general law are to be found in Scotch appeals and are cited in India.

Irish Reports stand on a different footing, as, both in point of substance and terminology, the Irish Law does not differ substantially from the English Law. The Common Law was introduced into Ireland early in the reign of John and Courts of Justice were set up in conformity with laws of England. We have the same distinction between Equity Courts and Common Law Courts and the same distinction between Common Pleas, Kings Bench and Exchequer. The Judges also were called by the same names. We had the Chancellors, Vice-Chancellors, Masters of the Rolls, Barons, Chief Barons and Lord Chief Justices. The Supreme Court of Judicature Act of 1877 established in their stead one Supreme Court of Judicature consisting of all the superior courts of law and the Equity Court, Court of Probate, Court of Matrimonial Causes, Land Estates Court and the High Court of Admiralty. The Land Estates Court is a peculiar feature of Ireland arising from the system of state loan and compulsory sale of holdings to tenants in occupancy

instituted by the various Land Acts. The Supreme Court was as in England divided into a Court of Appeal and the High Court of Justice. The High Court of Justice originally consisted of five divisions: Chancery, Queen's Bench, Common Pleas, Exchequer Chancery, Probate and Matrimonial. By the Judicature Act of 1897, Exchequer was amalgamated with the Queen's Bench and by the same Act, Probate, Admiralty, Bankruptcy, Matrimonial and Admiralty were administered as part of the Queen's Bench. The Chancery Division consisted of the Lord Chancellor, the Master of the Rolls, the Vice-Chancellor and the Land Judge. The matters assigned to the various divisions followed English lines and the rules of practice also have been assimilated as far as possible. The Court of Appeal consisted of certain *ex officio* Judges—two ordinary Judges, Lord Justices of Appeal and Additional Judges who have held certain judicial offices and consented to act. The Lord Chancellor was the President of the Court of Appeal. The jurisdiction of the Crown cases reserved was vested in Judges of the High Court or any five of them of whom the Chief Justice must be one. No appeal lay in a criminal matter save for an error of law apparent on the face of the record. From the decision of the Court of Appeal the appeal lay to the House of Lords. Before the union there was a great deal of controversy whether the appeal from the Courts in Ireland lay to the Irish House of Lords or also to the English House of Lords which was settled only in 1772 in favour of Ireland. But Since 1800, the date of the union of Ireland with England, the appeals lay to the House of Lords in England. The Government of Ireland Act, 1920, introduced a supreme Court for each of the two parts of Ireland and a High Court of Appeal for the whole of Ireland. This was subsequently modified by the Irish Free State Act and the North Ireland Act. For the former the Supreme Court was established with no appeal by right, but not barring appeal by special leave to the Privy Council. For the latter the Supreme Court was retained with appeal to the House of Lords as previously. The Supreme Courts in both the parts of Ireland consist of a court of Appeal and an original Court. Both the offices of Lord Chancellor and Master of the Rolls are abolished. The main points of difference between the Irish and the English Law are the following:— The Judgment Mortgage Act while abolishing the writs of eligit and all other modes of execution except *fi fa* introduced a system of registration of judgments which give the creditor a mortgage on the lands specified of the judgment-debtor for the amount of

the judgment. (2) The land purchase system already referred to. (3) The law of landlord and tenant is based on contract and not on tenures as in England. A reversion is not necessary to support the relation of landlord and tenant. Perpetually renewable leases for life were also a feature. An Act of 1850 provided for their conversion into freeholds subject to payment of a fixed rent. (4) The Law of Matrimonial causes stands as it did in England before the Act of 1857, that is to say, divorce can be had only by a bill. (5) There is a system of public registration in Ireland though voluntary. Registration gives priority over prior unregistered transfers if without notice. Registration itself does not amount to notice. The Irish Common Law Procedure Act has modified the law of limitation in Ireland. Its provisions correspond in the main to those of the English Act.

The history of Reporting also is similar to that in England. Reporting was and has continued private. In 1867 an incorporated Council of Law Reporting was established for the purpose of reporting, but other reporting still continues. The only reports prior to the Union are Ridgeway's Appeals and Writs of Error (1784 to 1796), and Wallis's Chancery Reports (1766 to 1791), Vernon and Scriven's Kings Bench (1786 to 1788), Ridgeway, Lapp and Schoales (1793 to 1795), of the same court. The Chancery Reports after the Union are Schoales and Lefroy (1802 to 1806), Ball and Beatty (1807 to 1814), Beatty (1813 to 1830), Molley (1827 to 1831), Lloyd and Goold (1834 to 1839), Drury and Walsh (1837 to 1840), Connor and Lawson (1841 to 1843), Lloyd and Goold (1835), Drury and Warren (1841 to 1843), Drury (1843 to 1844), Jones and Latouche (1844 to 1846) and Drury (1858 to 1859). Of these the reports Lloyd and Goold, Drury and Warren, Drury, Jones and Latouche and Connor and Lawson are specially valuable as they report judgments of Lord St. Leonards when he was Irish Chancellor. It is the opinion of Jessel that Drury and Warren reported cases better than Connor and Lawson. Hogan (1816 to 1834), Sausse and Scully (1837 to 1840), Flanagan and Kelly (1840-1842) report the Rolls Court. Smythe (1839 to 1840) is the only separate report of the Common Pleas.

The King's Bench Reports for the same period are Fox and Smith (1822 to 1824), Smith and Batty (1824 to 1825), Batty (1825 to 1826), Hudson and Brooke (1827 to 1831), Alcock and Napier (1831 to 1833), Cooke and Alcock (1833 to 1834),

Jebb and Symes (1838 to 1841), Jebb and Bourke (1841 to 1842). The Exchequer Reports are Hayes (1830 to 1832), Hayes and Jones (1832 to 1834), Jones (1834 to 1838), Jones and Carey (1838-1839), Longfield and Townsend (1841-1842). In 1838 began two series which reported all the superior courts called Irish Law Reports and Irish Equity Reports which continued up to 1850. They were followed by another series called Irish Common Law Reports and Irish Chancery Reports up to 1866. In 1867 the Council of Law Reporting came into being and started the series Irish Reports, Common Law series, and Irish Reports, Equity series, which continued up to 1877. In 1878 a new series began called Irish Law Reports which continued up to 1893. The present series date from 1894 and the citation now is (1894) 1 Irish and II Irish and so forth. Other journals that did the same sort of work are Law Recorder (1827-1831), another series (1833-1838), Glass Well (1831-1837), Irish Jurist (1849 to 1855), and a New Series (1855 to 1866). Irish Law Times began in 1867 and is continuing up to date. Irish decisions are not *per se* authority, *i. e.*, an English Judge is not bound to follow an Irish decision if he does not agree with it, but the Irish decisions are heard with respect and the more so where the Judges that have decided the case are men of learning: *H. C. Smith, Ltd.* v. *G. W. R. Co.* (3). The Irish Law being more approximately like the English than any other, the Irish decisions are naturally of more value to people governed by that system than any other.

Having done with Scotch and Irish Reports we may next pass to the Colonial Reports. I have told you that the law report is a pecular feature to the British system and you find it illustrated in a wonderful way in the colonies and dependencies. Wherever there is a British colony or dependency of any importance there you find a High Court or a Supreme Court modelled on the English Courts and a law report. Every colony and every state, however small, has its High Court or Supreme Court and, except rarely, has also its law report.

In Australia, the judicial power of the Commonwealth of Australia is vested in the Federal Supreme Court known as the High Court of Australia and in such other courts as the Parliament direct. The High Court consists of a Chief Justice and four puisne Judges. It is modelled on the Supreme Court of United

3. L R (1922) 1 A C 186.

States and has original jurisdiction (*i*) in all matters arising under a treaty, (*ii*) in all suits where the Commonwealth is a party, (*iii*) or between two states or a state and the resident of another state.

Its appellate jurisdiction extends to hearing appeals from (*i*) the judgment of any Judge of the Court, or (*ii*) of any federal Court or of the Supreme Court of any state from which appeal lay to the King previously or (*iii*) from the interstate commission as to points of law. The laws of each state bind federal courts exercising federal jurisdiction within that state. The judgments of this court are reported by the Commonwealth Law Reports, Australian Law Times and Australian Jurist.

New South Wales has a Supreme Court from which appeals lie to the Privy Council in matters other than federal. The law administered is the law in force in England in 1828 and statutes subsequently passed by the state.

Queensland separated from New South Wales and the law of the latter colony till the date of separation as subsequently modified by the state legislature governs. It has also a Supreme Court. The procedure of the Court is modelled on the Judicature Acts, unlike the New Wales' Court which is modelled on the Common Law Procedure Act. The law governing in South Australia is the Common Law of England as it obtained on the day on which the colony was proclaimed to be a British Province so far as it is applicable to the circumstances of the colony. It has also a Supreme Court with a procedure similar to that under the Judicature Act.

The Law of Victoria is the law of New South Wales on 1851, and as subsequently modified by the state legislature. The Supreme Court of this state is planned on the Judicature Act.

The law in Tasmania is the law of England as in 1828. It has a Supreme Court. In 1903, the principles of the Judicature Act were introduced into this colony.

The law of Western Australia is the Common Law of England as in 1829. The Supreme Court of this state proceeds on the lines of the Judicature Act.

In Fiji Islands the law in force is English law as in 1875 to the extent suitable to the circumstances of the colony. The court of these Islands also is called Supreme Court.

The reporting in New South Wales seems to be private. For 1872 to 1876, you have the Supreme Court reports, for 1876-1878 a new series of the same name; for 1880 to 1900

the New South Wales Law Reports, and from 1901 onwards the New South Wales State Reports.

In Queensland private reporting continued till 1908, and the reports are Supreme Courts Reports (1860-1881), Law Reports (Beor) (1876-1878), Law Journal (1879-1901), State Reports (1902-1907). Since 1908 there has been a Council of Law Reporting which looks after reporting and publishes the Queensland State Reports.

In Victoria also, reporting was private till 1875, under the name Victoria Law Reports (1870-1874). Since 1875, reporting is done by the Council of Law Reporting and the Reports bear the name of Victoria Reports.

Both Western Australia Law Reports, which is the earlier series, and Commonwealth Law Reports from 1903 seem to be under private control. In South Australia also, the same seems to be the fact—both South Australia Law Reports (1867-1883) and the State Reports (1884 up to date) being under private management.

Fiji Islands :—Fiji Islands have their own reports as well as their Supreme Court.

New Zealand :—New Zealand law is the English law as it was in 1840. The Court is called Supreme Court and is governed by the English practice. In 1903, right of appeal to the Privy Council was taken away. The effect of this Act on the right of appeal in previously instituted suits was considered in *Colonial Sugar Refining Company* v. *Irving* (4). New Zealand seems to be blessed with a number of reports, the latest and apparently the most authoritative being the New Zealand Law Reports under the superintendence of a Council of Law Reporting.

South Africa.—By the South Africa Act, 1909, a Supreme Court of South Africa was established consisting of a Chief Justice, the ordinary Judges of appeal and the other Judges of the several divisions of the Supreme Court of South Africa in the Provinces. By that Act, the several Supreme Courts of the Cape of Good Hope, Natal and the Transval and the High Court of the Orange River Colony were converted into so many provincial divisions of the Supreme Court, each with a President. Appeal from the provincial divisions is to the appellate division. No appeal lies to the King in Council, but the Judicial Committee may give special leave. The South African

4. L R (1905) A C 369.

J

Legislature may curtail even this right, but the legislation so made is subject to His Majesty's pleasure. The law in force in the various states are as follows: In the Cape of Good Hope, Roman Dutch Law as at the time of the second occupation by the British and later statutory changes and local customs govern. The procedure has been modified on English lines and Shipping and Maritine Law also has been introduced.

In Natal also the Roman Dutch Law prevails, but, so far as natives are concerned, they are governed by their own customs, provided they are not opposed to natural equity.

In Transval the law governing is the Roman Dutch Law and the general customs of South Africa.

Roman Dutch Law prevails also in the Orange River Colony.

All these have their reports. You have the South African Law Reports, Appellate Division and you have the Law Reports for the various provincial divisions. Reports are most plentiful in the State of Cape of Good Hope. They are: Menzies Reports of the Cape of Good Hope (1828 to 1850), Buchanan's Reports of the Supreme Court of Cape of Good Hope (1868 to 1879). Buchanan's Reports of the Appeal Court deal with the period before the South Africa Act. In addition you have Cape Law Journal and Cape Law Reports.

The High Court of South African Republic has Hetzgog's Reports, 1893, and Official Reports of the South African Republic.

For Transval you have Kotye's Reports of the High Court of Transval. Rhodesia has its Reports of the High Court of Rhodesia. Griqualand West has a High Court and also its reports styled the High Court of Griqualand Reports. You have the Reports of the Orange River Colony and of Orange Free State.

The Supreme Court of Canada was established by 38 Vic., c. 11, British North American Act, 1867. It consists of a Chief Justice and five puisne Judges. Appeals lie to it from the Supreme Courts of the various states on some matters and there is no further appeal to the Privy Council except by special leave of that tribunal. There is a Court of Exchequer having exclusive jurisdiction in cases where relief is sought against the Crown and concurrent jurisdiction in cases in which the Crown is the plaintiff or in matters relating to the revenue of the Crown, or where a Crown Officer is defendant and the action is in

respect of his official acts and in patent cases brought at the instance of the Attorney-General. Appeals from its judgments lie to the Supreme Court of Canada.

The Province of Alberta has a Supreme Court presided over by a single Judge. Appeal lies to the Privy Council where the value of the subject-matter exceeds £300.

British Columbia has also its Supreme Court with a Chief Justice and four puisnes. Appeal lies to the Privy Council direct in cases above £300 or to the Supreme Court of Canada and thence by special leave. The law is the English Law as in 1858 so far as it is not excluded by reason of the special circumstances and conditions of the colony.

The law of Manitoba is English Law as it was in 1870. The Court consists of a Court of Appeal with a Chief Justice and three Judges who are also *ex-officio* Judges of the King's Bench. Appeal lies from the Court of Appeal to the Privy Council when the value is above £300 or to the Supreme Court of Canada and thence to the Privy Coucil by special leave.

New Brunswick.—Supreme Court consists of Court of Appeal and a Trial division with a Chief Justice and five Judges. Proceedings in Equity are heard by one of the Judges of the Court of Appeal known as the Equity Judge. Appeal lies to the Privy Council in cases above £300 or where crown rights are involved.

In Nova Scotia the whole of English Common Law, unless wholly unsuitable, applies. It has a Supreme Court; with a Chief Justice, a Judge in Equity and five puisne Judges.

Ontario previously called Upper Canada has a Supreme Court with a High Court of Justice and a Court of Appeal. The High Court has three divisions, Common Pleas, Chancery and Exchequer, each with a Chief Justice. The Court of Appeal has also its Chief Justice and four Judges. The decision of a Divisional Court of Appeal binds the Court of Appeal and all its divisions. The decision of a co-ordinate authority is binding, but the Judge may refer the question to the Appellate Court. An appeal lies to the Privy Council direct in cases over 4,000 dollars, or to the Supreme Court of Canada to which an appeal lies in all matters where title to realty is involved or a question as to patents is involved and where the value exceeds 1,000 dollars. The law is the English Law as at the year 1792.

Quebec previously called Upper Canada is governed by French Law which was codified in 1866.

Newfoudland is the oldest British colony. The Statute Law of England up to 1833 and the common law govern. It has its Supreme Court with a Chief Justice and two Judges.

The Supreme Court Reports and Exchequer Reports in Canada are published by the Government of Canada. You have also private Reports like Canada Law Times and Canadian Law Journal.

In New Brunswick, the reporting is private. In Nova Scotia, the Bar Society now publishes the Reports. The earlier Reports were by private agencies—Oldmights, Russel and Chasley and Russel and Geloest. Similarly the respective Law Socities publish Alberta Reports, British Columbia Law Reports, Manitoba Law Reports and Ontario Law Reports. In Quebec, the Bar Society publishes its reports now called Quebec Reports. Prior to these, there were various private publications. Staurt's Lower Canada Reports K. B. (1810 to 1834), Lower Canada Reports (1851 to 1861), Lower Canada Jurist (1857 to 1881),Legal News (1878 to 1887), Law Journal (1866 to 1868) and Sykes Lower Canada Reports. In addition you have certain French Law Reports like La Revenue Juridique. In Ontario also previously there were private publications like upper Canada Queen's Bench series, Common Pleas, and Chancery Chambers Reports. Newfoundland has its Newfoundland Reports and Prince Edward Island, Prince Edward Island Reports.

Gibralter has its Supreme Court and administers English Law. Malta has its own Court and administers Roman Law. Information is not available as to whether these have their reports. Ceylon has its Supreme Court and an appeal lies to the Privy Council from final judgments over 5,000 Rupees in value. The Law administered is Dutch Law modified by local enactments, some of which have introduced specific portions of English Law, and by judicial decisions following English Rules of Law and Equity, Desavalame or customs of the Tamil inhabitants, laws and usages of Mussulmans and the Vandyam Law. There is a Penal Code, Civil Procedure and Evidence Act, based on Indian models.

In Hongkong also, there is a Supreme Court with a Chief Justice and puisnes with appeals to the Privy Council from judgments over £500 in value and administering the common law of England as it existed in 1843, and statute law. The Civil Procedure is based partly on Indian model and partly English.

The Strait Settlements also have their Supreme Court. They administer the common law as it stood in 1825 and various Statutes and Ordinanees and special laws such as Hindu Law, Muhammadan Law and Christian Law. The mercantile law is generally English Law. Some of the Indian Acts have been either made directly applicable or have been substantially adopted.

The East African Protectorate and Uganda also have each their High Court and have paid India the compliment of adopting the Indian Civil Procedure, Criminal Procedure and the Penal Code. In British North Borneo also, the Indian Penal Code and Civil and Criminal Procedure Codes have been adopted.

Canadian editions of English Text-books have familiarised Indian Lawyers to some decisions of Canadian and Australian Courts. The Empire Digest of Butterworth may help the citation of cases from other parts of the British Empire where local authority is not available and the point is novel. But it is never likely that the reports of these courts will be largely cited or relied upon in Indian Courts, even if the intrinsic authority of the judgments should be much greater than they are at present. Unfamiliarity with the peculiar conditions of each place will contribute its share and political prejudice will do the rest. There is larger likelihood of reference to American authorities both by reason of their intrinsic authority and by reason of the absence of any political prejudice against that country. But judgments of the Privy Council delivered in cases coming from these countries are used as authority both in Indian and English Law Courts and that way, the growth of law is influenced by them. Cases from Africa and Canada have been used in India for the elucidation of the law applicable to religious societies. Decisions of the Privy Council from different parts of the British Empire as to the elements necessary to constitute malicious prosecution are quoted in India as authority. A decision in a case from Australia as to possessory title has effectively ruled out many Indian decisions on the subject. A British Columbia case and a Gibralter case on the question as to time being of the essence is authoritative as much in those places as in India. *Corea* v. *Appuhamy* (5) and *Agency Company* v. *Short* (6), two leading authorities on the law of adverse possession, are colonial cases. The former is a Ceylon case and the latter a New South Wales case.

5. L R (1912) A C 230. 6. (1888) L R 13 A C 793.

The decision in *Meyyappa Chetty* v. *Subramanian Chetty* (7) on Strait Settlement Liimtation Ordinance, in *Mahomed Syedol Ariffin* v. *Yeoh Ooi Gark* (8) on Evidence Act, in *Will* v. *United Lankat Plantations Co., Ltd.* (9) on Ceylon Civil Procedure Ordinance are naturally taken as authorities on the questions decided in India also. In *Kumber* v. *The British India Steam Navigation Co., Ltd.* (10) it has been ruled that the decisions of the Privy Council are binding authority in India from whichever part of the world the case might come provided, of course, the law administered is the same. The Privy Council case relied upon in that case came from Strait Settlements. The use of the colonial cases is not all on our side alone. You find the Privy Council recently citing a decision in a case from Bombay, in a Jamaica case in *Ward* v. *Brown* (11). *Sirdhar Dayal Singh* v. *Raja of Faridkote* (12) is a leading authority on private international law. Lord Brougham's judgment in *Mayor of Lyons case* (13) and Lord Stowell's judgment in *Re Indian Chief* (14) are leading authorities on the question as to the extent to which English law is applicable to foreign settlements. The judgment of Justice Wilson as to copyright in a Calcutta case was cited with approval recently in an English case.

SUMMARY OF ENGLISH CASES.

REX *v.* WOOD, (1928) 1 K. B. 302.

Practice—Coroner present in the retiring room with Jury—Inquest.

Where a coroner was present with a Jury in their retiring room while they were considering their verdict,

Held, that it was a fatal irregularity and misconduct and the inquisition must be quashed.

MONKS *v.* FOX'S EXECUTORS, (1928) 1 K. B. 351.

Income-tax—Victory bonds—Tender in payment of—Estate duty to the Crown—Value—Addition of accrued interest

7. L R (1916) 1 A C 603. 8. L R (1916) 2 A C 575.
9. L R (1914) A C 19. 10. (1913) I L R 38 M 941 : 25 M L J 162.
11. L R (1916) 2 A C 121.
12. (1894) L R 21 I A 171 : L R 1894 A C 670 : 4 M L J 267 (P C).
13. (1836) 1 M I A 175. 14. (1800) 3 Ch. Rob. 26.

till the date of transfer—Whether accrued interest is assessable—Finance Act, 1917 *(7 and 8 Geo V, c.* 31), *S.* 34—*Finance Act,* 1918 (8 *and* 9 *Geo. V, c.* 15), *S.* 42.

Under S. 34 of the Finance Act, 1917, as amended by S. 42 of the Finance Act, 1918, and under the terms of the prospectus relating to the issue of 4 per cent. Victory bonds, the Victory bonds were tendered by the assessee to the Commissioners of Inland Revenue in payment of Estate duty and the latter accepted the same at the face value of the bonds with the addition of the interest accrued but remaining unpaid at the date of transfer.

Held, that the accrued interest up to the date of transfer which was taken into account in the valuation of bonds was part of the value of the bonds and not interest and therefore that it was not subject to income-tax.

FIRST GARDEN CITY, LIMITED *v.* BONHAMCARTER, (1928) 1 Ch. 53.

Company—Cumulative preference shares and ordinary shares—Provision for payment of cumulative dividend—Provision for payment of balance of profits to a city—Mode of distribution of profits.

A Garden City Company, Ltd., was incorporated under the Company's Act for the purpose of forming a garden city. Its capital was divided into cumulative preference shares and ordinary shares. The Memorandum of Association of the company contained a clause to the effect that a cumulative dividend not exceeding 5 per cent. per annum should be paid on the ordinary shares of the company and that the balance of profits should be applied to the benefit of a garden city or of its inhabitants. The Company's Articles of Association provided that, subject to the rights of holders of debentures and preference shares, the net profits of the company after providing for a reserve fund and depreciation should be divided by way of dividend among the members in proportion to the amount paid on the ordinary shares held by them respectively, but so that the dividend upon the ordinary shares for any year shall not exceed the aggregate rate of 5 per cent. per annum, and that the surplus of the net profits of the company after payment of such dividends and the amount necessary to make up dividends for the past years to the rate of 5 per cent per annum shall be applied for the benefit of the

city or its inhabitants. The company issued a number of ordinary shares during several years but no dividend was paid for a period of 20 years till 1923 when a full dividend of 5 per cent. was paid.

Held, that the profits which were available for the payment of arrears of dividend but which were not sufficient to pay the whole of the arrears must be distributed rateably among the shareholders in proportion to the respective amounts of arrears of dividend payable on the shares held by them respectively.

ALBEMARLE SUPPLY CO. *v.* HIND & CO., (1928) 97 L. J. K. B. 25.

Contract—Hire purchase agreement—Provision that the hirer should not have any lien on the taxicabs hired for any moneys due for repairs to them—Bailment of the taxicabs by the hirer—Account for supply of oil, petrol and other repairs—Lien by bailee for cost of repairs.

The plaintiff company, owners of taxicabs, let three taxicabs to one Botfield, under three separate hire purchase agreements. The agreements contained clauses to the effect that the hirer could not create any lien upon the taxicabs for moneys due in respect of any repairs done to them. The hirer kept these three taxicabs and two other cabs belonging to him at the defendants' garage. The defendants looked after them, cleaned them, supplied tyres, oil, etc., and did all necessary repairs and charged rent for them. Botfield got into arrear with his payments under the hire purchase agreements and thereupon the plaintiffs gave notice to the hirer to determine the hire-purchase agreements and required the cars to be delivered to them. In an action by the plaintiffs for delivery of the cabs, the defendants who had no notice of the agreement, claimed a lien on the taxicabs for the balance due to them, part of which only went towards the repair of the three cabs hired from the company.

Held that the defendants were not precluded from claiming a lien because of the clauses in the agreement and the right of lien was not lost by their claiming a lien for a larger amount than was due to them, as the plaintiffs had not tendered to the defendants the amount due, or any other sum, but disputed the claim of lien altogether and so the defendants were entitled to refuse delivery of the cabs.

VOSPER *v.* GREAT WESTERN RAILWAY, (1928) 97 L. J. K. B. 51.

Common Carrier—Passenger entrusting his suit-case to the porter of a railway company—Loss—Liability of the Railway Company—Negligence.

Where a passenger entrusted his suit-case to the porter employed by the company and gave directions to place it in a first class compartment but the passenger having a third class ticket travelled both in the third class compartment and in the restaurant car and the suit-case was lost and the passenger brought a suit for damages against the Railway Company,

Held, that the Railway Company was liable for the loss of the suit-case because the loss was not occasioned by the negligence of the passenger.

In such cases the liability of the Railway Company as common carrier is modified by an implied condition that the passenger should take reasonable care and the loss should not occur on account of the negligence of the passenger.

WISBECH RURAL COUNCIL *v.* WARD, (1928) 97 L. J. K. B. 56.

Contract—Building Contract—Architect under—A mere agent for the owner or quasi-arbitrator*—Granting of Interim Certificates—Negligence—Liability for damages.*

An architect under a building contract may occupy two positions: (*a*) he may be merely an agent of the building owner; or (*b*) he may be placed in the position of an arbitrator or *quasi-arbitrator*. If he is merely acting as an agent for the building owner he may be liable for negligence. If he is acting an an arbitrator or *quasi-arbitrator*, he is clothed with the duty of exercising an impartial judgment and he will not be liable for mere negligence. He will only be liable when he has been shown to be fraudulent.

Though in giving a final certificate the architect acts in a *quasi* judicial character, unless there is some express clause in the contract to contradict it, it cannot be said that in giving an interim certificate he is so acting. On the contrary, in giving an interim certificate he is merely acting as agent for the building owner unless there is something in the contract to contradict that relationship.

PATRICK *v.* RUSSO-BRITISH GRAIN EXPORT CO., (1928) 97 L. J. K. B. 60.

Contract—Sale of goods—Goods not delivered to the buyer —Buyer reselling the goods and the seller aware of it—Loss of profit—Damages—Measure of.

The seller sold to the buyers certain quantity of wheat of a particular description, but delivery was to be made at a particular date. The buyers who were merchants resold the same to another at a profit before the date of delivery and it was within the contemplation of the original seller that the buyers would resell the wheat. The seller failed to deliver on the due date. On and after the date of breach by the seller it was impossible for the buyers to obtain the same quantity of wheat of the contract description.

Held, that the buyers were entitled to recover their loss of profit on resale and that the difference between the contract price and resale price constituted the measure of damages.

TARN *v.* SCANLAN, (1928) A. C. 34.

Income-tax—Foreign Shipping Company—Contracts made and services performed in the United Kingdom in regard to the carriage of goods by an English Company—Liability of the resident as an agent—Income-tax Act, 1842, *S.* 41.

A Danish Shipping Company and an English Company established by agreement between themselves a regular line of steamers between Copenhagen and Hull. It was a term of the agreement that the English Company should be the exclusive agents for the Danish Company at Hull during the continuance of the agreement. The English Company controlled the freights at this end, quoted rates of freight to the consignors, arranged room on the steamers and employed stevedores to put the goods on board. The bills of lading were signed "for the master" by one of the English Company's clerks. Further, the English Company collected the freight for outward-bound goods and any other moneys due from the consignors, and remitted what was due to the Danish Company.

The questions that arose for decision were (1) whether the Danish Company exercised a trade within the United Kingdom so as to be chargeable under Schedule D of the Income-tax Acts with tax on the profits and gains of such trade, and (2) whether they were so chargeable in the name of the English Company: Rowlatt, J., and the Court of Appeal answered both the questions in the affirmative.

Held, (on appeal), that, applying the tests laid down in *Erichsen* v. *Last*, (1881) 8 Q. B. D. 414, the Danish Shipping Company did carry on in the United Kingdom trade to the extent to which goods were taken on board their ships at Hull for carriage elsewhere, and (2) that this trade was carried on by the British Company as their regular agents.

GREAT WESTERN RAILWAY COMPANY *v.* OWNERS OF S. S. MOSTYN, (1928) A. C. 57.

Shipping—Damage caused by a vessel to the Dock Works—No negligence on the part of the shipowner—Liability—Harbours, Docks and Piers Clauses Act, 1847 (10 *and* 11 *Vict., c.* 27), *S.* 74.

In an action for damage caused to the docks of the plaintiff by the defendant's vessel it was found that there was no negligence on the part of the defendant ship-owner.

Held, that, though the shipowner was not liable under the common law, by virtue of S. 74 of the Harbours, Docks and Piers Caluses Act, 1847, the owner of the vessel doing damage to a harbour, dock or pier or works connected therewith was responsible to the undertakers for the damage caused whether negligence was proved or not.

River Wear Commissioners v. *Adamosn*, (1877) 2 A. C. 743, explained and distinguished.

WATSON *v.* HAGGITT, (1928) A. C. 127.

Partnership—Construction of Deed—"Nett profits"—Meaning of.

According to clause 3 in a partnership deed each of the two partners was to be paid annual salary and the "nett profits" of the partnership business was to be divided between them. Another clause 21 provided that, if either partner should die, the surviving partner should pay to the representatives of the deceased partner for each of the succeeding five years a sum equivalent to one-third share of the nett annual profits.

Held, that the "nett annual profits" for the purpose of cl. 21 should be calculated without deducting the salary provided for the surviving partner.

There is no rule of general application that the same meaning ought to be given to an expression in every part of the document in which it appears. It is only to solve any difficulty or ambiguity that such a device is permissible and is resorted to.

JOTTINGS AND CUTTINGS.

Amendment of the Letters Patent of the Madras High Court by Order in Council, dated, 3rd November, 1927:—

(*a*) For the fifteenth caluse of the said Letters Patent the following clause shall be substituted, namely :—

15 "And we do further ordain that an appeal shall lie to the said High Court of Judicature at Madras from the judgment (not being a judgment passed in the exercise of appellate juricdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of S. 107 of the Government of India Act, or in the exercise of criminal jurisdiction) of one Judge of the said High Court or one Judge of any Division Court, pursuant to S. 108 of the Government of India Act, and that notwithstanding anything hereinbefore provided an appeal shall lie to the said High Court from a judgment of one judge of the said High Court or one Judge of any Division Court, pursuant to S. 108 of the Government of India Act, made in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, where the Judge who passed the judgment declares that the case is a fit one for appeal ; but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to Us, Our Heirs or Successors in Our or Their Privy Council, as herein provided : "

(*b*) In the 36th clause of the said Letters Patent for the words " then the opinion of the senior Judge shall prevail " the following words shall be substituted, namely :—

" They shall state the point upon which they differ and the case shall then be heard upon that point by one or more of the other judges and the point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it ".

2. And we do further ordain and declare that these Letters Patent shall be published in the *Fort St. George Gazette* and shall have effect from the date of such publication.

Forensic Speech—Now and Then.—It is no wonder that a judge hates to be addressed "as if he were a jury," the reason is obvious. On the other hand, it is notorious that most juries

would resent being addressed "as if they were a judge," and would probably fall asleep under such treatment. Between the two, the way of the advocate is hard; and few indeed are they who excel in both hemispheres. But there are a few. And it may be admitted that much higher gifts are required to convince and or to "wheedle" a judge than the most intelligent of juries—special or common.

One reason for the scarcity of that forensic eloquence which was so much admired in the Victorian age is undoubtedly the steep decline in the use of juries. The conversational, reasonable tone by which the attention and regard of judges is secured can never favour a "great speech" of the old kind; but it is slowly producing a much finer and better style, the end of which is clarity, brevity, and the right use of the illuminating phrase.—*L. J.*, 1928, p. 105.

The Judicial Changes.—The announcement, on Tuesday morning, that Lord Atkinson had retired, that Lord Justice Atkin had been appointed a Lord of Appeal in his place, and that Mr. Justice Sankey had been appointed to fill the Lord Justiceship so rendered vacant, whilst unexpected at the precise moment, occasioned no surprise. Lord Atkinson, who is eighty-three, had been a Lord of Appeal for twenty-two years—having been appointed direct from the Irish Bar in 1905, after having been a Law Officer in Ireland for sixteen continuous years—a position which must have been, during that period, a very difficult and anxious one. The position of Attorney-General or Solicitor-General in England is recognised as being no sinecure; but the Irish Law Officers at the close of the nineteenth century must indeed have had a difficult task; and to hold such an office from 1889 to 1905 attests at once Lord Atkinson's mental and physical vigour. He has earned, and received, the appreciative respect of the profession in this country, and carries into retirement its good wishes for the future.—*L. J.*, 1928, p. 107.

Lord Justice Atkin.—Lord Justice Atkin has long enjoyed the esteem and the admiration of all who have practised before him. Although he had a great reputation at the Bar, there was some surprise—though nothing but approval—when he was made a Judge of the King's Bench at the early age, nowadays, of forty-five. He quickly justified on the Bench the high expectations held by all who knew him, and he has added to his

reputation during his eight years in the Court of Appeal. His practice at the Bar was chiefly in the Commercial Court, but his interests have been by no means confined to that branch of the law. For some years he was President—and a very active President—of the Medico-Legal Society, a post which he only vacated last year. And he was, of course, the Chairman of the Committee which, after the Ronald True case, investigated the Macnaughten Rules, and presented a report which is still being argued about. Lord Justice Atkin was also, for several years, the President of the Council of Legal Education, and, as such, was intimately concerned with the training and testing of candidates for the Bar. His promotion to the highest Court of the Country is universally welcomed.—*L. J.*, 1928, p. 107.

Mr. Justice Sankey.—Mr. Justice Sankey, who becomes the new Lord Justice, is sixty-one, a year older than Lord Justice Atkin in age, and a year junior to him as a Judge; for Lord Justice Atkin became a Judge in 1913, and Mr. Justice Sankey in 1914. The sound commonsense, the ripe knowledge of law, and the courteous imperturbability of manner which distinguish Mr. Justice Sankey combined to make him very nearly an ideal Judge of first instance; there were never any scenes in his court, and the cases which came before him always seemed to be very easy to try. To most people he is associated with the Coal Industry Commission of 1919—the Sankey Commission. Whatever views one may hold as to the proper solution of the problems affecting the coal industry, and whether it is considered that the report of that Commission should have been accepted or not, it will be generally agreed that the duties of the Chairman were performed with remarkable ability. But the course of its proceedings, and the fact that its recommendations necessarily became the subject of heated controversy, made it plain that it is the height of unwisdom to appoint serving Judges to preside over inquiries raising acute political issues. It is unfair to the individual Judge, who finds himself cited as approving or disapproving a particular policy; and it tends to harm the prestige of the Bench as a whole. Mr. Justice Sankey's promotion to the Court of Appeal has been received with great pleasure by the profession.—*L. J.*, 1928, p. 107.

The New Judge.—It was announced on Wednesday that the vacancy in the King's Bench Division, occasioned by the promotion of Mr. Justice Sankey to the Court of Appeal, had

been filled by the appointment of Mr. John Anthony Hawke. Mr. Hawke, who is fifty-eight, was called by the Middle Temple in 1892, and took silk in 1913. He has long enjoyed a leading practice at the Common Law Bar, and, whilst jury cases have, perhaps, been his chief *metier,* he has established a reputation as a very sound lawyer, perhaps the most eloquent proof of this fact being that he has frequently been briefed to lead in the Chancery Division. Mr. Hawke, who held the appointments of Attorney-General to the Prince of Wales and Recorder of Plymouth, sat in the House of Commons for the St. Ives Division of Cornwall. He has enjoyed great popularity at the Bar, and his promotion to the Bench will be received with warm approval by the profession.—*L. J.* 1928, p. 108.

Counsel's Freedom of Speech.—Mention was made a short time ago herein of the limitations placed by the unwritten rules of professional conduct and etiquette on counsel's freedom of speech; and the case was cited in which Lord Campbell having once, as counsel, declared to a jury his personal belief in his client's innocence, found himself tongue-tied as a Judge when Sergeant Shee, relying on Campbell's indiscreet precedent, repeated the offence.

And, behold, here is history, which never exactly repeats itself, within measurable distance of a repetition in *Rex* v. *Rust.* Not once, said the Lord Chief Justice, but five times, did counsel remind the jury of the usual and terrible punishment for murder, quoting in aid words uttered by the L. C. J. himself—but on a very different occasion. Now it is wrong for counsel to do this sort of thing; for the jury are concerned with the verdict only, and not with the consequences. The jury know, without any reminding, that the punishment for murder is usually death; but Mr. Valetta rubbed it in. He achieved a notable success; and many old members of the Bar have declared that which he said amiss might have been said differently and unobjectionably.—*L. J.*, 1928, p. 131.

Observations to and concerning juries.—It is perhaps unseemly for a mere legal scribbler, behind the veil of anonymity, to express approval or dislike concerning the words and ways of judge or counsel engaged in the grave issues and events of a trial for murder. And to the Lord Chief Justice one renders a homage and respect due to one who is already regarded as one of the greatest—and most impartial—of all the judges who have adorned the Bench of England.

Yet must it be confessed that the Lord Chief's words to the prisoner, after his acquittal, sounded strangely in the ears of some members of the Bar. The "Not Guilty" of a jury is final and unanswerable. Should its recititude, even by the faintest of innuendoes, be impugned?

Admittedly, great judges have before now commented on the findings of juries. In a case of a very difficult character a judge—was it not Coleridge, C. J.?—thus addressed the prisoner: "I congratulate you on your almost miraculous escape from your thirty-seventh conviction for felony".—*L. J.*, 1928, p. 131.

The Releases of Branson, J.—The Honourable Mr. Justice Branson has many merits, and one of them it is my bounden duty to extol; resulting, as it does, in manifold blessings, comforts, savings of time and temper, and other good to members of the Bar, solicitors, juries, litigants, witnesses and other beneficiaries. I refer to his considerate practice, early in the judicial day, of releasing all those engaged in cases which appear on his day's list, but which, on the facts before him, cannot possibly be heard on that day. Other judges are not inconsiderate, of course; but Branson, J., excels in this. And there have been judges who have, without just cause, waited until three O'clock and later before pronouncing the time-saving order of release, when it might well have been delivered long before the luncheon adjournment.

It is told, moreover, that never once has judicial time been lost as a result of this judge's considerate practice. On the other hand, thousands of the working hours of the beneficiaries aforesaid have been saved for the country, whereby many have praised his name. —*L. J.*, 1928, p. 132.

Fraudulent Judgments.—To what extent can an English Court interfere by injunction to prevent the enforcement of a foreign judgment obtained by fraud? This was the question before the Court of Appeal recently in *Ellerman Lines, Ltd.* v. *Landi* (*Lloyd's List*, 1st inst., *post* p. 142), and they carried the injunction somewhat further than MacKinnon, J., had done (Lloyd's List, 21st October, 1927; 44 Times L. R. 7, *sub nom. Ellerman Lines, Ltd.* v. *Read and Others*). One of the plaintiffs' ships *The Falernian*, stranded in the Black Sea. Landi was a part-owner and the manager of a salvage steamer, and a contract was made with him to get the ship off. The contract was in a Lloyd's form and provided that the salvage remuneration

should, in default of agreement, be fixed by arbitration in London; that security for payment should be arranged in London; and that the salvor would not arrest the ship except in case of an attempt to remove her before security was given. Security was given and the ship was refloated and put in dry dock at Constantinople for temporary repairs. Thence she was to be taken to Marseilles, but Landi arrested her, and before the Turkish Court swore that security had not been given and claimed salvage remuneration. The Turkish Court gave judgement by default for some 24,000*l* in English money. The ship was sold for about 4,000*l.* and was finally lost to Ellerman Lines. Her value was said to be some 14,000*l.*—*L. J.*, 1928, p. 135.

A World-wide Injunction.—According to the judgment of MacKinnon, J., Landi obtained the Turkish judgment by swearing what he knew to be untrue—that security had not been given. The action here was brought for damages and for an injunction to restrain the enforcement of the Turkish judgment. There was the fear that Landi might seek to enforce it against other ships of the plaintiffs in Black Sea ports. But MacKinnon, J., held that he could not grant an injunction restraining generally the enforcement of the Turkish judgment. He made a declaration that it was not to be enforced as an English judgment, but while the English courts would refuse to enforce the judgment here, it was beyond the power of the English Courts to say that it should not be enforced anywhere in the world. The Court of Appeal have taken a stronger line. If, said Scrutton, L.J., there was no authority for such an injunction, it was time the Court made one. Landi is a naturalized British subject. No injunction could go, of course, against the Turkish Court, but an injunction could go against Landi to restrain him from applying to the Turkish Court to enforce his judgment in breach of his contract. This is a useful precedent and it carries the remedy as far as is possible. Whether, in fact, such an injunction will be effective is another matter.—*L. J.*, 1928, p. 135.

Making of a Master.—There was a time when a Mastership was as soft and pleasant as a bed of roses. The Master was supposed to be versed in the practices of the different Courts and he sat accordingly beneath the judge, ready and willing to inform him on abstruse points of procedure; but as the judge

usually knew quite as much as the Master, information was seldom required. When not in Court, the Master taxed a few bills of costs. But now he has to work hard for his living. It was in 1867 that the hard times began. In that year the Judges' Chambers Act was passed, and the Masters were enabled and commanded to exercise the jurisdiction of judges in chambers.

Since 1884 the appointment of Common Law Masters has lain in the Lord Chancellor, the Lord Chief Justice and the Master of the Rolls, by rotation. Formerly the Chief Justice of the King's Bench, the Chief Justice of the Common Pleas, and the Chief Baron of the Exchequer each enjoyed the right to appoint in his own Court. How does the intending candidate apply for one of these desirable jobs? It is understood that letters of request, accompanied by recommendations from lawyers, clergymen and politicians, are addressed to the Lord Chief Justice and the Master of the Rolls. Barristers of less than five years' standing are not eligible.—*L. J.*, 1928, p. 153.

The Favoured Sex.—That woman continues, despite every attempt at sex equality, to enjoy peculiar legal favours and privileges is oft exemplified in the Probate, Divorce and Admiralty Division—to say nothing of the favours shown her in the Chancery Courts and in the Common Law tribunals, where the law of torts is referred to and applied.

In the President's Court this matter was recently exemplified in the case of *Butler* v. *Butler*. The husband was granted a decree *nisi* on the ground of the wife's adultery. He was a man of substantial means and the President declared that it was desirable that the question of her future maintenance, to which the husband agreed, should be determined. Whereupon he granted the decree, but declared that, before it was made absolute, he would hear what proposal the husband had to make in regard to the future maintenance of the respondent.

And whether the husband is willing or unwilling, the Court has an absolute discretion to make an order that he shall pay such sum for the future maintenance of the guilty wife as it shall deem reasonable. The rule is not obsolete or even antique. It is embodied in S. 1 of the Matrimonial Causes Act of 1907.

But suppose a similar case of rich wife and poor husband. Has the Court any discretion to order her to pay for his future maintenance? The answer is, and will continue to be, in the negative.—*L. J.*, 1928, p. 153.

BOOK REVIEWS.

CRIMINAL INVESTIGATION AND PROCEDURE by N. Kasturiranga Aiyangar, B. A., B. L., High Court Vakil, Madras. Printed and published by Messrs. P. R. Rama Aiyar & Co., Madras. Price Rs. 4-8-0.

We have great pleasure in acknowledging the receipt of the book from the pen of one who has practised before the Criminal Courts in the mofussil and in Madras. The object of the book is to state clearly the various stages of the investigation of crimes from the first information report to the stage of putting in a final charge sheet. The author has intended it mainly for the use of Police Officers and it is written with a view to enable them to have a thorough grasp of the rules of the Procedure, the non-observance of which has in many a case resulted in the acquittal of the accused although they may not be innocent. It can hardly be denied that the duties of the Police Officers are often so engrossing that they cannot devote much time to the study of the treatises of criminal law and procedure. The author has presented in less than 400 pages of this volume, the duties of the Police in the investigation of crimes and what they should avoid in the discharge of their duties under the law and in accordance to the decisions of Courts. The author has fully realised what a distinguished officer in the police service has said "that the success of an investigating officer depends not less on a good working knowledge of the law in the matter of evidence and procedure, than on any special intuitive skill in detection which is found more often in detective novels than in actual practice" and keeping that in view has dealt with the rules of criminal procedure and evidence in twelve chapters of the book under review. The Appendices A to F give the various Police enactments, Appendix G gives a few decisions of interest by the Madras High Court and Appendix H gives the rules of examination of witnesses by an eminent American Lawyer, Mr. Paul Brown. The book will be found useful not merely to the Police Officers but to lawyers practising before the Magistrates and to the Magistracy in general. We cannot conclude this review without drawing special attention to the printing and get up of the book which leave nothing to be desired.

AIDS TO HINDU AND MOHAMMEDAN LAWS by R. V. Apte, M.A., LL.B., Pleader, Poona. Price Rs. 2-8-0.

This book is intended for the use of students preparing for the law examinations. Though we are not in favour of students reading hand-books on the various subjects and acquiring no higher knowledge than is contained in them, even such books have their use after the students have gone through the prescribed treatises and acquired a fair acquaintance of the subjects dealt with. The object of the small books is to focus the attention of the student preparing for the examination and to gather the threads of his study of the treatises. A special feature of this book is the collection of the original Sanskrit texts on all the important topics of Hindu Law with their English translation. One other remarkable feature consists in the Sanskrit sutras on Mohammedan law composed by the author himself with an English translation of them. We have no doubt that this book will be appreciated by the students.

SUCCESSION CERTIFICATES AND CURATORS, by Dr. M. Krishnamachariar, M. A., M. L., PH. D., Provincial Civil Service, Madras.

The law on the subject of Succession Certificates and Curators was till 1925 to be found in two small enactments, *i. e.*, the Succession Certificate Act of 1889 and the Curators Act of 1841. In that year, all those provisions were brought into a consolidating enactment, the Indian Succession Act of 1925, which repealed a number of enactments and consolidated the law relating to succession. The present volume is therefore a commentary on those sections of the Indian Succession Act, relating to succession certificates and curators. The author is well known as a writer of text books of various branches of law and he has in this small volume given all the information on the subject noticing the decisions of the superior Courts under the various enactments, dealing with succession certificates and curators. The book wiil be found useful in solving many difficulties arising under these provisions..